

REMARKS

I. Status Summary

Claims 1-104 were originally filed in the subject U.S. patent application. Claims 1-104 as filed were subjected to a Restriction/Election Requirement. In response to the Restriction/Election Requirement, claims 1-43 were elected and claims 44-104 were canceled without prejudice. Claims 1-43 are thus pending and have been examined.

In an Official Action dated June 1, 2006 (hereinafter "the Official Action"), the United States Patent and Trademark Office (hereinafter "the Patent Office") rejected claims 1-43 on several bases under 35 U.S.C. § 103(a). Particularly, claims 1-43 have been rejected over U.S. Patent No. 6,281,189 to Heimann et al. (hereinafter "Heimann") in view of U.S. Patent Application Publication No. 2003/0213747 of Carbonell et al. (hereinafter "Carbonell"); claims 1-19, 21-28, and 33-43 have been rejected over U.S. Patent No. 5,143,639 to Krawack (hereinafter "Krawack") in view of Carbonell; claims 20 and 29-32 have been rejected over Krawack in view of Carbonell as applied to claims 1-19, 21-28, and 33-43 and further in view of Heimann; and claims 1-16, 18, 19, 21-26, 33, and 37-43 have been rejected over Carbonell.

Claims 1-19, 21-28, and 33-43 have also been provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-17 of co-pending U.S. Patent Application Serial No. 11/248,782 in view of Carbonell.

Reconsideration of the application in light of the remarks set forth hereinbelow is respectfully requested.

II. Responses to the Obviousness Rejections

Claims 1-43 have been rejected on several bases under 35 U.S.C. § 103(a). First, claims 1-43 have been rejected under 35 U.S.C. § 103(a) over Heimann in view of Carbonell. Next, claims 1-19, 21-28, and 33-43 have been rejected under 35 U.S.C. § 103(a) over Krawack in view of Carbonell. Next, claims 20 and 29-32 have been rejected under 35 U.S.C. § 103(a) over Krawack in view of Carbonell as applied to claims 1-19, 21-28, and 33-43 and further in view of Heimann. And finally, claims 1-16,

18, 19, 21-26, 33, and 37-43 have been rejected under 35 U.S.C. § 103(a) over Carbonell. The Patent Office's assertions in support of these rejections are presented on pages 4-9 of the Official Action.

After careful consideration of the rejections and the Patent Office's bases therefor, applicants respectfully traverse the rejections and submit the following remarks.

II.A. Response to the Rejection over Heimann in view of Carbonell

Claims 1-43 have been rejected under 35 U.S.C. § 103(a) over Heimann in view of Carbonell. According to the Patent Office, Heimann teaches a composition containing at least one soybean oil-derived compound and at least one member chosen from the group of drying agents, co-solvents, and additives. The composition is asserted to comprise methyl soyate and d-limonene. Particularly, the Patent Office asserts that Heimann teaches compositions containing from 0.5-20% by weight of at least one drying agent, 1-30% by weight of at least one co-solvent, additives from 0-25% by weight, and 5-75% by weight of methyl soyate. Suitable additives are asserted to include surfactants, emulsifiers, antimicrobial compounds, etc. Suitable co-solvents are asserted to include water, hydrocarbon glycols, and mixtures thereof, among others. The compositions disclosed are asserted to be useful for tar and asphalt removal among other uses.

The Patent Office concedes that Heimann does not teach the use of a benzoic acid ester or a composition having the specific physical parameters containing a benzoic acid ester, methyl soyate, nonionic surfactant, water, and the other requisite components of the compositions in the specific amounts recited in the instant claims. The Patent Office contends, however, that these deficiencies are cured by Carbonell, which is asserted to teach environmentally friendly solvents comprising GRAS solvents such as benzoic acid ester solvents, preferably containing at least 70-99% by weight of one or more esters such as methyl benzoic acid ester, isopropylbenzoic acid ester, methyl salicylate, ethyl salicylate, etc. As such, the Patent Office asserts that it would

have been obvious to one of ordinary skill in the art at the time the invention was made to use a benzoic acid ester solvent in the cleaning composition taught by Heimann because Carbonell teach the use of such solvents in similar cleaning compositions and that benzoic acid esters are environmentally friendly solvents. The Patent Office further asserts that it would have been obvious to formulate a composition containing a benzoic acid ester, methyl soyate, nonionic surfactant, water, and the other requisite components of the composition in the specific amounts recited in the instant claims because the broad teachings of Heimann in combination with Carbonell suggest a composition containing a benzoic acid ester, methyl soyate, nonionic surfactant, water, and the other requisite components of the composition in the specific amounts as recited in the instant claims.

Applicants respectfully disagree. Preliminarily, applicants respectfully submit that for an obviousness rejection to stand, the cited document or combination must disclose or suggest all aspects of the claimed invention; contain a suggestion to modify the cited document(s) to arrive at the claimed invention; and there must be a reasonable chance of success. This framework is set forth in Hodosh v. Block Drug Co., 786 F.2d 1136 (Fed. Cir. 1986), in which the U.S. Court of Appeals for the Federal Circuit set forth what is described as the “tenets of patent law that must be adhered to when applying §103”, Id. at 1143, n.5. Those tenets set out in Hodosh are:

- a) the claimed invention must be considered as a whole;
- b) the references must be considered as a whole and suggest the desirability and thus obviousness of making the combination;
- c) the references must be reviewed without benefit of hindsight vision afforded by the claimed invention; and
- d) “ought to be tried” is not the standard with which obviousness is determined.

Applicants submit that the combination of Heimann and Carbonell does not support a *prima facie* case of obviousness. Particularly, applicants respectfully submit that the Patent Office has the burden of demonstrating not only that there would have been a reasonable expectation of successfully producing the claimed compositions if

one of ordinary skill in the art had combined the cited references, but also that one of ordinary skill in the art would have been motivated to do so.

To elaborate, the Patent Office's assertions in support of the instant rejection are set forth on pages 5-6 of the Official Action. These assertions can be restated as follows:

1. it would have been obvious to one of ordinary skill in the art to use a benzoic acid ester in the cleaning composition of Heimann because Carbonell teaches the use of such solvents in similar cleaning compositions and that benzoic acid esters are environmentally friendly solvents and further that Heimann teach the use of various co-solvents that would encompass benzoic acid ester solvents;
2. it would have been obvious to one of ordinary skill in the art to formulate a composition containing a benzoic acid ester, methyl soyate, nonionic surfactant, water, and the other requisite components of the composition in the specified amounts because the broad teachings of Heimann in combination with Carbonell suggest a composition containing a benzoic acid ester, methyl soyate, nonionic surfactant, water, and the other requisite components of the composition in the specific amounts recited by the instant claims; and
3. with respect to the pH and flash point of the composition, the Examiner asserts that the teachings of the combined references would suggest compositions having the same pH and flash point as recited by the instant claims because Heimann in combination with Carbonell suggest compositions containing the same components in the same proportions as recited by the instant claims.

With respect to Assertion No. 1 above, applicants respectfully submit that the Patent Office has provided no support for the contention that Heimann teach the use of various co-solvents that would encompass benzoic acid ester solvents. Review of Heimann demonstrates that this reference discloses that the "co-solvent can comprise at least one member selected from the group consisting of water, soybean oil,

hydrocarbon glycols, mixtures thereof, among others" (see Heimann at col. 2, lines 13-15). Applicants respectfully submit that this passage provides no suggestion for using a benzoic acid ester as a co-solvent, and thus the Patent Office's assertion that Heimann teaches the use of various co-solvents that would encompass benzoic acid ester solvents appears to be based on impermissible hindsight. Thus, applicants respectfully submit that Assertion No. 1 is improper and does not support a *prima facie* case of obviousness of the claims over Heimann in combination with Carbonell.

Furthermore, applicants respectfully submit that the Patent Office appears to be misinterpreting the meaning of the term "co-solvent". Applicants respectfully submit that as used in the instant application and in Heimann, a co-solvent is a compound that is used to enhance the solubility or emulsifiability of the components of the composition in the composition itself. Applicants respectfully submit that the term does not refer to an additional solvent in the composition that is employed to enhance the solubility of the material to be removed by the composition.

Stated another way and in the context of the instant claims, applicants respectfully submit that contrary to the meaning apparently given to "co-solvent" by the Patent Office, this term is not used in the instant application or in Heimann to refer to additional solvents that can be used to remove petroleum residue from a substrate. Therefore, applicants respectfully submit that the term "co-solvent" would not be understood by one of ordinary skill in the art after review of the disclosure of Heimann to encompass an aromatic ester such as a benzoic acid ester. As such, applicants respectfully submit that the Patent Office's assertion that Heimann teaches the use of various co-solvents that would encompass benzoic acid ester solvents represents an inaccurate interpretation of the Heimann reference, and as such, does not support the instant rejection of claims 1-43.

Turning now to Assertion No. 2, applicants respectfully submit that since the disclosures of Heimann in combination with Carbonell do not suggest adding a benzoic acid ester to the composition of Heimann, the Patent Office's contention that the broad teachings of Heimann in combination with Carbonell suggest a composition containing a benzoic acid ester, methyl soyate, nonionic surfactant, water, and the other requisite

components of the composition in the specific amounts recited by the instant claims also lacks support. Particularly, and as set forth hereinabove with respect to Assertion No. 1, since there is no suggestion in the combination of Heimann and Carbonell to add a benzoic acid ester to the composition of Heimann, applicants respectfully submit that there can be no suggestion in this combination to produce a cleaning composition that comprises the various components in the claimed amounts.

Stated another way, applicants respectfully submit that the Patent Office provides no convincing line of argument that one of ordinary skill in the art would have been motivated to add a benzoic acid ester to the Heimann composition. Rather, it appears that Assertion No. 2 is based on the same misinterpretation of Heimann on which Assertion No. 1 is based: namely that “co-solvent” could encompass “additional solvent”. Applicants respectfully submit that this interpretation of the art is inconsistent with the disclosures of the instant application and of Heimann itself, and thus does not support the instant rejection.

Furthermore, applicants respectfully submit that even if one of ordinary skill in the art were to combine Heimann and Carbonell to add a benzoic acid ester to the composition of Heimann, there is no suggestion in the combination of Heimann and Carbonell to add the components in the amounts recited in claim 1 of the instant application. With reference first to Carbonell, the solvents disclosed in this reference comprise about 70-99% aromatic ester, preferably about 90% to about 95% by weight of the one or more benzoic acid esters (see Carbonell at paragraph [0039]). Applicants respectfully submit that there is no disclosure whatsoever in Carbonell concerning a solvent that efficiently removes bitumen that has an aromatic ester component that is less than about 70% by weight.

Heimann, on the other hand, is asserted to teach cleaning compositions that comprise methyl soyate, an aliphatic ester. The methyl soyate is disclosed in Heimann to be present in the cleaning solution at a concentration of about 5-75% by weight. In its various embodiments, the Heimann compositions are disclosed as being useful for such disparate uses as:

general purpose cleaner, parts cleaner, engine degreaser (automotive,

aircraft, and aerospace industries), electronics cleaning, Cosmoline® remover, tar and asphalt removal, graffiti remover, sewage treatment applications, hand cleaner, floor cleaner, printing press cleaner, carpet stain removal, metal cleaner, vinyl cleaner (e.g., commercial and residential vinyl siding), additive to an aerosol compound, heat transfer medium, among other uses.

Heimann at col. 1, lines 32-41). It is noted, however, that there is no teaching in Heimann whatsoever as to how these various uses relate to the percentage of aliphatic ester present in the disclosed compositions. Thus, even assuming *arguendo* that Heimann discloses an asphalt remover, there is no disclosure that would inform one of ordinary skill in the art as to how much of an aliphatic ester should be present in the asphalt remover.

Thus, even assuming *arguendo* that one of ordinary skill in the art were to combine the disclosures of Heimann and Carbonell, applicants respectfully submit that at best he or she would produce a composition that contained at least 5% aliphatic ester as per Heimann and at least 70% aromatic ester as per Carbonell.

Claim 1 of the instant application, however, does not recite a composition with these components in these amounts. Rather, claim 1 recites a composition that comprises from about 10% to about 60% by weight of an aromatic ester and from about 30% to about 60% of an aliphatic ester. Additional dependent claims recite even lower aromatic ester contents, including claims 6 (50%) and 7 (40%). Therefore, applicants respectfully submit that the combination of Heimann and Carbonell cannot be read to suggest the subject matter of instant claim 1, 6, or 7.

And finally, applicants respectfully submit that Assertion No. 3 is also based on this same improper interpretation of the term "co-solvent", and as such, it is believed to be inaccurate. Particularly, applicants respectfully submit that since Heimann in combination with Carbonell does not suggest compositions containing the same components in the same proportions as recited by the instant claims, there is no reasonable basis for the Patent Office to assert that the combined references can be read to suggest compositions having the same pH and flash point as recited by the instant claims. Accordingly, Assertion No. 3 also fails to support the instant rejection.

Continuing with the instant rejection, applicants further respectfully submit that claim 1 recites that the composition is water soluble. Applicants respectfully submit that neither Heimann nor Carbonell teaches a water soluble composition, and thus the combination of Heimann and Carbonell cannot be read to suggest a water soluble composition.

For example, applicants respectfully submit that review of the entire disclosure of Heimann demonstrates that the compositions disclosed in this reference are at best aqueous emulsions. The Patent Office's attention is directed to column 1, lines 54-55 ("The composition can also include at least one additive to enhance emulsification..."; emphasis added); column 2, lines 26-28 ("In some cases, the additive may perform more than [one] function, for example, depending upon the amount water can function as an emulsifier as well as a co-solvent"; emphasis added); column 2, lines 44-47 ("In another aspect of the invention, the inventive composition is combined with an additive that comprises at least one emulsifier. The inventive composition is combined with an amount of an emulsifier effective to form an emulsion"; emphases added); EXAMPLE 1 (disclosed product contains emulsifiable methyl soyate and is a yellowish milky emulsion); and EXAMPLE 2 (disclosed product is 40% emulsifiable methyl soyate). Therefore, applicants respectfully submit that after review of the disclosure of Heimann, one of ordinary skill in the art would understand this reference to disclose only compositions that form emulsions in water.

Turning now to the disclosure of Carbonell, applicants respectfully submit that the Patent Office has conceded that this reference discloses compositions that are 70% or more aromatic esters by weight. Applicants respectfully submit that aromatic esters such as those disclosed in the cited reference are insoluble in water, and thus one of ordinary skill in the art would recognize that the compositions disclosed in the cited reference are not water soluble.

Therefore, applicants respectfully submit that even if one of ordinary skill in the art were to add a water insoluble aromatic ester such as those disclosed in Carbonell to the water insoluble compositions disclosed in Heimann, a water insoluble composition would result. Claim 1 of the instant application clearly recites that the claimed

compositions are water soluble, and thus applicants respectfully submit that the combination of Heimann and Carbonell does not teach or suggest each and every element of the claims. Therefore, applicants respectfully submit that the combination of Heimann and Carbonell does not support a rejection of claim 1 under 35 U.S.C. § 103(a).

Summarily, applicants respectfully submit that Patent Office has not provided the convincing line of argument to establish that one of ordinary skill in the art would have been motivated to combine the cited references, and further that even if one of ordinary skill in the art had combined the references as proposed by the Patent Office, the combination would not disclose or suggest each and every element of claim 1.

Accordingly, applicants respectfully submit that the Patent Office has not established a *prima facie* case of obviousness of claim 1 over the combination of Heimann and Carbonell. Claims 2-43 all depend directly or indirectly from claim 1, and thus are also believed to be distinguished over the cited combination of references. Applicants respectfully request that the rejection of claims 1-43 under 35 U.S.C. § 103(a) over the combination of Heimann and Carbonell be withdrawn at this time.

II.B. Response to the Rejection over Krawack in view of Carbonell

Claims 1-19, 21-28, and 33-43 have been rejected under 35 U.S.C. § 103(a) over Krawack in view of Carbonell. According to the Patent Office, Krawack teaches compositions for removing inks and the like from printing machines. These compositions are asserted to contain a mixture of 50-100% by weight of a C₁-C₅ alkyl ester of an aliphatic C₈-C₂₂ monocarboxylic acid or a mixture of such esters, 0-50% by weight of vegetable oil, 0-10% by weight of a surfactant, and a corrosion inhibitor in an amount of up to 2% by weight. While the Patent Office concedes that Krawack does not teach the use of a benzoic acid ester, the Patent Office asserts that this deficiency is cured by Carbonell. The Patent Office thus asserts that it would have been *prima facie* obvious to one of ordinary skill in the art to have used a benzoic acid ester in the cleaning composition taught by Krawack because Carbonell teaches the use of solvents

such as benzoic acid esters in similar cleaning compositions and that benzoic acid esters are environmentally friendly solvents. The Patent Office further asserts that it is *prima facie* obvious to combine two compositions, each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose (*citing In re Kerkhoven*, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980)). The Patent Office further asserts that it would have been *prima facie* obvious to one of ordinary skill in the art to have formulated the claimed composition because the broad teachings of Krawack in combination with Carbonell suggest a composition containing a benzoic acid ester, methyl soyate, nonionic surfactant, water, and the other requisite components of the composition in the specific amounts as recited in the instant claims.

Applicants respectfully disagree. Initially, applicants respectfully submit that the Patent Office has employed impermissible hindsight in combining Krawack and Carbonell since one of ordinary skill in the art would not look to a reference that teaches compositions for removing fat and/or inks (*i.e.*, Krawack) from printing equipment for components to add to a composition designed to remove petroleum residues from a substrate.

Rather, it appears that Krawack has been cited merely because it discloses an aliphatic ester in the context of a cleaning solution. Applicants respectfully submit, however, that this is not sufficient to support a *prima facie* case of obviousness of claim 1 and dependents thereof since there is no suggestion in Krawack that materials that can be used to remove fats and/or inks would be appropriate for use on petroleum residues.

Therefore, applicants respectfully submit that the Patent Office has not presented any convincing line of evidence that one of ordinary skill in the art would have been motivated to combine Krawack and Carbonell. The cited combination thus does not support a *prima facie* case of obviousness of claims 1-19, 21-28, and 33-43.

Furthermore, the Patent Office has misinterpreted the holding of In re Kerkhoven in an attempt to claim that Krawack and Carbonell teach compositions useful for the same purpose. More specifically, applicants respectfully submit that In re Kerkhoven

cannot be read to apply simply to "cleaning solutions" generally, and as such, cleaning fats and/or inks and cleaning asphalt cannot be considered the "same purpose" under In re Kerkhoven. Therefore, applicants respectfully submit that Krawack and Carbonell do not involve compositions that are useful for the same purpose under In re Kerkhoven, and thus this case is inapplicable to the instant rejection. As such, applicants respectfully submit that In re Kerkhoven cannot be relied on to establish a *prima facie* obviousness of claims 1-19, 21-28, and 33-43 over Krawack and Carbonell.

Accordingly, applicants respectfully submit that the Patent Office must establish its *prima facie* case consistent with M.P.E.P. § 2143. Particularly, the Patent Office must provide *inter alia* a convincing line of evidence that one of ordinary skill in the art would have been motivated to combine Krawack and Carbonell. Applicants respectfully submit that the Patent Office has provided no such convincing line of evidence, and as such, has not established its *prima facie* case.

Applicants further respectfully submit that similar to the remarks set forth hereinabove with respect to the rejection over the combination of Heimann and Carbonell, one of ordinary skill in the art would not have been motivated to combine the reference as proposed by the Patent Office to produce the composition of claim 1. In fact, applicants respectfully submit that this lack of motivation is even more pronounced in the context of the instant rejection because there is absolutely no disclosure in Krawack that would have led one of ordinary skill in the art to employ the aromatic ester of Carbonell at a level of less than about 70% by weight for removing petroleum residues from a substrate. Particularly, applicants respectfully submit that even assuming *arguendo* that Carbonell discloses a composition for removing petroleum residues, Krawack does not disclose a composition for this same purpose, and thus one of ordinary skill in the art would not have been motivated to depart from the aromatic ester content of the Carbonell composition.

Therefore and as set forth hereinabove with respect to the previous rejection, even if one of ordinary skill in the art might have been motivated to add an aromatic ester to the composition of Krawack in order to produce a composition for removing a petroleum residue, the amount of aromatic ester employed would have been at least

70% by weight because this is what Carbonell discloses can be used to dissolving bitumen. Claim 1 of the instant application recites compositions with an aromatic ester content of 60% or less, and thus the combination of Krawack and Carbonell does not disclose or suggest each and every element of claim 1, and by extension, of claims that depend from claim 1.

Summarily, applicants respectfully submit that the Patent Office has not presented a *prima facie* case of obviousness of claims 1-19, 21-28, and 33-43 over Krawack in view of Carbonell. The Patent Office has provided no convincing line of evidence to support the contention that one of ordinary skill in the art would have combined these references, and further has not established that even if the references were combined, one of ordinary skill in the art would arrive at the claimed subject matter.

Accordingly, applicants respectfully request that the rejection of claims 1-19, 21-28, and 33-43 have been rejected under 35 U.S.C. § 103(a) over Krawack in view of Carbonell be withdrawn at this time.

II.C. Response to the Rejection over Krawack in view of Carbonell
and further in view of Heimann

Claims 20 and 29-32 have been rejected under 35 U.S.C. § 103(a) over the combination of Krawack, Carbonell, and Heimann. According to the Patent Office, it would have been *prima facie* obvious to use d-limonene as a fragrance in the composition taught by Krawack because Heimann taught the use of d-limonene as an odorant in a similar cleaning composition, and further because odorants such as d-limonene are notoriously well known as suitable for use in cleaning compositions and desirable for such use.

Applicants respectfully disagree. Initially, applicants respectfully submit that claims 20 and 29-32 all depend directly from claim 1, and thus include all the limitations of claim 1. Applicants respectfully submit that the comments presented hereinabove with respect to the rejections of claim 1 over the combination of Heimann and Carbonell

and Krawack and Carbonell are equally applicable here. Particularly, applicants respectfully submit that the Patent Office has failed to establish a *prima facie* case of obviousness of claim 1 over these combinations, are thus also have failed to establish a *prima facie* case of obviousness of claim 1 over the combination of Krawack, Carbonell, and Heimann. Claims 20 and 29-32 all depend from claim 1, and thus are also believed to be distinguished over the combination of Krawack, Carbonell, and Heimann.

Furthermore, with regard to the instant rejection as applied to claims 29-32, applicants respectfully submit that the Patent Office has provided no basis for asserting that one of ordinary skill in the art would have combined Krawack, Carbonell, and Heimann to arrive at the subject matter of these claims. Applicants respectfully direct the Patent Office's attention to the discussions hereinabove with respect to the rejections over Carbonell and Heimann and over Krawack and Carbonell, which applicants respectfully submit are equally applicable to the instant rejection. Particularly, applicants respectfully submit that the combinations of Carbonell and Heimann and of Krawack and Carbonell would not have motivated one of ordinary skill in the art to produce compositions with aromatic ester contents of less than 70%. Claims 29-32 all recite compositions with aromatic ester contents of 40% or 50%. Applicants respectfully submit that the combination of Carbonell and Heimann and/or of Krawack and Carbonell cannot be read to motivate one of ordinary skill in the art to produce the compositions recited in claims 29-32.

Applicants further respectfully submit that the deficiencies in the Patent Office's contentions with respect to these rejections are not cured by the attempt to combine all three cited references. Therefore, applicants respectfully submit that the Patent Office has not presented a *prima facie* case of obviousness of claims 29-32 over the combination of Krawack, Carbonell, and Heimann.

Accordingly, applicants respectfully submit that claims 20 and 29-32 are believed to be distinguished over the combination of Krawack, Carbonell, and Heimann, and further respectfully request that the rejection under 35 U.S.C. § 103(a) over this combination be withdrawn at this time.

II.D. Response to the Rejection over Carbonell

Claims 1-16, 18, 19, 21-26, 33, and 37-43 have been rejected under 35 U.S.C. § 103(a) upon the contention that the claims are obvious over Carbonell. According to the Patent Office, it would have been obvious to one of ordinary skill in the art to formulate a composition containing a benzoic acid ester, an aliphatic ester, water, and the other requisite components of the claims compositions in the claimed amounts because the broad teachings of Carbonell suggest a composition containing a benzoic acid ester, an aliphatic ester, water, and the other requisite components of the claimed compositions in the claimed amounts.

Applicants respectfully disagree. Applicants respectfully submit that the Patent Office has provided no convincing evidence whatsoever that Carbonell suggests a composition that (a) contains an aliphatic ester; or (b) includes the recited components in the claimed amounts.

First, applicants respectfully submit that the Patent Office has pointed to no disclosure whatsoever in Carbonell that can be interpreted as suggesting the use of an aliphatic ester. Applicants respectfully submit that every ester disclosed in Carbonell is an aromatic ester. Thus, applicants respectfully submit that the assertion that the compositions disclosed in Carbonell would suggest compositions that also include an aliphatic ester to one of ordinary skill in the art is completely unsupported.

Furthermore, applicants respectfully submit that the aromatic esters disclosed in Carbonell are present in the composition at 70-99% by weight. As such, there is no disclosure or suggestion of using from about 10% to about 60% by weight of an aromatic ester in the composition as recited in claim 1.

Accordingly, applicants respectfully submit that Carbonell does not disclose or suggest each and every element of claim 1, and thus does not support a *prima facie* case of obviousness of claim 1. As such, applicants respectfully submit that the Patent Office's unsupported assertion that Carbonell suggests a composition containing a benzoic acid ester and an aliphatic ester does not support the instant rejection.

Accordingly, applicants respectfully submit that a *prima facie* case of obviousness of claim 1 has not been established. Applicants further respectfully submit that claims 2-16, 18, 19, 21-26, 33, and 37-43 all depend directly or indirectly from claim 1, and thus are also believed to be distinguished over Carbonell. Applicants therefore respectfully request that the rejection of claims 1-16, 18, 19, 21-26, 33, and 37-43 under 35 U.S.C. § 103(a) over Carbonell be withdrawn at this time.

III. Response to the Provisional Double Patenting Rejection

Claims 1-19, 21-28, and 33-43 have been provisionally rejected under the judicially-created doctrine of non-statutory obviousness-type double patenting over claims 1-17 of co-pending application serial number 11/248,782 in view of Carbonell. Applicants respectfully submit, however, that the instant application has an earlier filing date (March 2, 2004) than the cited co-pending application (priority to October 12, 2004). Furthermore, the ownerships of the instant application and of the co-pending application are currently different, and as such, it is believed that resort to the filing of a terminal disclaimer is not available.

Accordingly, applicants respectfully defer action on the instant rejection unless and until one or more of the allegedly conflicting claims of the co-pending application are placed into condition for allowance. As such, applicants respectfully request that the instant provisional rejection be placed in abeyance until such time.

CONCLUSIONS

Should there be any minor issues outstanding in this matter, the Examiner is respectfully requested to telephone the undersigned attorney. Early passage of the subject application to issue is earnestly solicited.

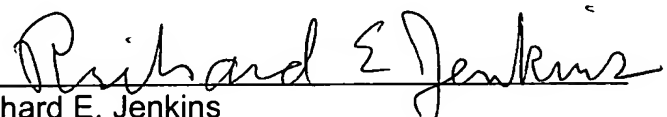
DEPOSIT ACCOUNT

The Commissioner is hereby authorized to charge any deficiencies or credit any overpayments associated with the filing of this correspondence to Deposit Account Number 50-0426.

Respectfully submitted,
JENKINS, WILSON, TAYLOR & HUNT, P.A.

Date: December 1, 2006

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